**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**Criminal Writ Petition no. 394 of 2006**

Sangameshwar Dhulappa Surgehalli .....Petitioner
Versus
The Commissioner of Police, Solapur & anr. .....Respondents

Mrs. Veena Thadani for the Petitioner
Mr. A.S. Shitole, APP for the Respondents

**CORAM: S.C. Dharmadhikari, J**
**13th April, 2007.**

P.C.

The Petitioner is the Proprietor and owner of an establishment known as "HOTEL NAGESH" situate at Soregaon, Solapur.

2. It is the case of the Petitioner that he has been granted license by the Licensing Authorities which permits him to use the premises for Public Amusement within the meaning of Bombay Police Act, 1951. On 1-3-2004 the Petitioner was granted a license by the Licensing Authority in the requisite form and a copy thereof is annexed as annexure A to the Petition. The Petitioner relies upon the license, copies of which are annexed at pages 17-A to C and contends that each of these licenses are capable of being renewed by the Licensing Authority in pursuance of the

powers conferred upon it in that behalf. Reliance is placed on the Rules for Licensing and Controlling places of Public Amusements (other than Cinemas) and Performances for Public amusement including Melas and Tamasha's, 1960.

3. The Petitioner states that upon the initial license period coming to an end, he applied for renewal but a communication was received by him on 29-12-2004 stating therein that the request of the Petitioner for renewal of license upto 31-12-2005 cannot be granted.

4. The Petitioner aggrieved by this communication preferred an appeal to the Appellate Authority which was initially dismissed as being time barred. The Petitioner approached to this Court by instituting criminal writ petition no. 2162 of 2005 and this Court by an order dt. 23-9-2005 set aside the order impugned therein and restored the appeal of the Petitioner for being heard on merits in accordance with law.

5. Thereafter, appeal was heard on merits and by the impugned order (dt 8-2-2006 annexure-D) the same is rejected.

6. Aggrieved by this order, the instant petition under Article 226 of the Constitution of India has been instituted.

7. Mrs. Thadani appearing for the Petitioner submits that although the application for renewal of the license in question for the period 1-1-2005 to 31-12-2005 is rejected and the issue may have become academic but the Petitioner has been unable to obtain renewal of the performance license and premises license even subsequently. The impugned order proceeds on the basis that the establishment of the Petitioner while holding music performance indulges in acts which cannot be said to be decent but obscene. She submits that this is totally false in as much as there is no complaint against the Petitioner of any nature whatsoever. The Petitioner has specifically pointed out that the Restaurant in question does not have any dance programmes but live band music is played while the customers are enjoying food and drinks. Once the performance is of such a nature, there is no question of any reliance being placed upon the alleged communication of the Maharashtra State Women's Commission so also several instances of Dance bar being conducted in the State. The activities, which are described as obscene and indecent so also lowering the prestige, dignity and status of women are not pertaining to the Petitioner's Restaurant but some other Establishment. The Petitioner has

not employed any female waitresses or dancers and has been conducting Restaurant business since 1986.

8. The learned APP on the other hand has invited my attention to the Policy of the State whereby it has decided to close down all dance bars and performances which involve dancing by women. He submits that there are complaints about certain establishments at Solapur. He submits that these complaints so also the communication from the Womens Commission could have safely been relied upon. He submits that although the complaints do not make any reference to Live Band or Orchestra as such but it is well known that such activities involve performances by women and such performances are sometimes obscene and indecent. Therefore, the orders under challenge do not require any interference.

9. In my view the period for which the Petitioner was seeking renewal of his license having already expired, the larger issue need not be decided in the facts of this case.

10. The Petitioner was seeking renewal for a period commencing from 1-1-2005 to 31-12-2005 which has been refused by the impugned

orders. The apprehension of the Petitioner that these orders and observations therein would influence the authorities while considering further applications for renewal is devoid of any merit because no material in that behalf is placed before me. In my view, the authorities are bound by the provisions of law. The Bombay Police Act makes the concept of a place of public entertainment and public amusement clear and distinct. It also defines the term "Dancing school" and "Eating house" separately. The Rules empower the authority to consider the application for renewal of premises licenses so also performance licenses. I need not refer to them in great details because the authorities are aware of the same. The authorities are also aware of the fact that a license can also be refused for the reasons which are set out in Rule 120. The grant of Performance licenses, the restrictions and their duration are matters provided in the Rules. Therefore, it is futile to urge that the authorities would be influenced by any observations or complaints or communications while considering the application for renewal made by the Petitioner a fresh. In my view, in the light of the clarification that I propose to issue, it would not be necessary to quash and set aside the

impugned orders. More so when the period for which the license was to be renewed has already expired.

11. In the above circumstances the petition is disposed off by granting liberty to the Petitioner to apply for renewal of the subject license and if such an application is made by the Petitioner, the same shall be considered and disposed off within a period of 4 weeks from the date of its receipt uninfluenced by any observations and findings in the orders under challenge. The authorities to decide the applications strictly on merits and in accordance with law. Writ Petition is disposed off with the above directions keeping all larger issues open for decision in an appropriate case.

**(S.C. DHARMADHIKARI J)**